

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LYN MICHELE PRUDHOMME,

Plaintiff,

Case No. 18-cv-10801
Hon. Matthew F. Leitman

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

**ORDER (1) SUSTAINING IN PART AND OVERRULING IN PART
DEFENDANT’S OBJECTIONS (ECF #14) TO THE MAGISTRATE
JUDGE’S REPORT AND RECOMMENDATION (ECF #13), (2)
ADOPTING IN PART REPORT AND RECOMMENDATION (ECF #13) AS
OPINION OF THE COURT, (3) GRANTING IN PART PLAINTIFF’S
MOTION FOR SUMMARY JUDGMENT (ECF #11), (4) DENYING
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT (ECF #12), AND
(5) REMANDING THIS ACTION FOR FURTHER PROCEEDINGS**

In this action, Plaintiff Lyn Michele Prudhomme challenges the denial of her application for disability insurance benefits under the Social Security Act. (*See* Compl., ECF #1.) Both Prudhomme and Defendant Commissioner of Social Security filed motions for summary judgment. (*See* Prudhomme’s Mot. for Summ. J., ECF #11; Commissioner’s Mot. for Summ. J., ECF #12.) The assigned Magistrate Judge issued a Report and Recommendation (the “R & R”) in which he recommended that the Court (1) grant Prudhomme’s motion to the extent it seeks

remand, (2) deny the Commissioner's motion, and (3) remand for further proceedings. (*See* ECF #13.)

The Commissioner has now filed limited objections to the R&R (the "Objections"). (*See* ECF #14.) In the Objections, the Commissioner does not oppose the Magistrate Judge's recommended disposition of the pending motions nor does the Commissioner take issue with the Magistrate Judge's recommendation that the Court remand this action for further proceedings. Instead, the Commissioner complains about the following sentences in the R & R:

Second, it appears that Prudhomme was blind-sided to learn on the morning of the second hearing that she would be represented by an attorney she had never met who knew little (if anything) about her case.³ The Court cannot help but suspect that, had Prudhomme's long-time attorney – who was familiar with her file – appeared at the second hearing, he would have known to challenge VE Silver's testimony that she had prior work experience as a secretary. Thus, with these facts in mind, the Court simply cannot overlook both the VE's flawed testimony with respect to Prudhomme's past employment and the ALJ's reliance on that testimony in finding at Step Four that she can perform her past relevant work.

³ Indeed, Prudhomme expressed frustration at this hearing, saying she was thrown "for a loop" when her long-time attorney, Joshua Moore, called her that morning "and said he wasn't going to be here today and I've known Josh for so long and I just – I was trying to take it like an adult and I, this morning, I just burst out crying because Josh wasn't going to be here." (Tr. 65).

(R & R, ECF #13 at Pg. ID 886.) The Commissioner objects that these statements are speculation and that they violate the rule that federal courts do not second-guess the manner in which a claimant's counsel presents a claim for relief. (Objections, ECF #14 at Pg. ID 892-95.) The Commissioner urges the Court not to adopt the R & R.

The Court SUSTAINS IN PART the Commissioner's Objection. The sentences to which the Commissioner objects are not essential to the Magistrate Judge's analysis or conclusions, and the Court can adopt the bulk of the analysis and all of the conclusions – which the Court finds persuasive – without adopting the challenged sentences. Accordingly, the Court adopts the R & R with the sole exception of the sentences quoted above, which the Court rejects. And the Court adopts in full the disposition recommended in the R & R. Accordingly, for the reasons stated above, **IT IS HEREBY ORDERED** that:

- The Commissioner's Objections to the R & R (ECF #14) are **SUSTAINED IN PART** to the extent they ask the Court not to adopt the sentences from the R & R quoted above, and the Objections are **OVERRULED IN PART** to the extent they seek any additional relief;
- The R & R (ECF #13) is **ADOPTED** as the Opinion of the Court with the exception of the sentences from the R & R quoted above, which are **REJECTED**;
- Prudhomme's Motion for Summary Judgment (ECF #11) is **GRANTED IN PART** to the extent it seeks remand and **DENIED IN PART** to the extent that it seeks additional relief beyond a remand;

- The Commissioner's Motion for Summary Judgment (ECF #12) is **DENIED**; and
- This action is **REMANDED** to the Commissioner for further proceedings consistent with this Order and with those portions of the R & R adopted by the Court herein.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: October 11, 2018

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on October 11, 2018, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(810) 341-9764